Filed 5/18/16 In re E.G. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re E.G., a Person Coming Under the Juvenile Court Law.	B264237 (Los Angeles County Super. Ct. No. PJ49114)
THE PEOPLE, Plaintiff and Respondent, v. E.G., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Fred J. Fujioka, Judge. Affirmed with directions.

Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Supervising Deputy Attorney General, and William N. Frank, Deputy Attorney General, for Plaintiff and Respondent.

E.G. (Appellant) contends that his commitment to the Department of Juvenile Justice (DJJ) for various probation violations was an abuse of discretion. We disagree.[1]

BACKGROUND

A. Petition No. 1: Rape

On April 24, 2012, when Appellant was 15 years old, the People filed a petition alleging that Appellant committed rape by means of force (Pen. Code, § 261, subd. (a)(2);[2] count 1), rape of an unconscious person (§ 261, subd. (a)(4); count 2), and sexual penetration by a foreign object in concert with another person (§ 264.1, subd. (a); count 3) (Petition No.1). The initial recommendation from the probation officer was for the Appellant to be sent to the DJJ "based on the extremely egregious nature" of the alleged offenses.

On August 21, 2012, after Appellant admitted count 1, the juvenile court dismissed counts 2 and 3, sustained the petition, declared him to be a ward of the court, and, instead of ordering Appellant to the DJJ, ordered Appellant placed in a long-term juvenile camp for nine months and in the custody of a probation officer.

B. Petition No. 2: Probation violations

On December 20, 2013, approximately six months after Appellant was released from camp, the People filed a petition alleging that Appellant, now age 17, had failed to report to his probation officer, attend a sex offender program, visit the Museum of

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[1] At the hearing on Appellant's probation violations, the trial court did not impose or reimpose any terms of probation when it committed the Appellant to the DJJ. However, paragraph 1A on the third page of the minute order memorializing the juvenile court's disposition reflected that Appellant remains subject to all previous terms and conditions of his probation. Appellant argues that the minute order is in error and should be corrected. We agree. "Where there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls." (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385; *People v. Mesa* (1975) 14 Cal.3d 466, 471.) Accordingly, while we affirm the judgment, as discussed infra, we also remand this matter to the juvenile court for the limited purpose of correcting the April 28, 2015 minute order, by striking the probation terms imposed.

[2] All further statutory references are to the Penal Code unless otherwise indicated.

Tolerance, regularly attend school, and receive passing grades (Petition No. 2).[3] Appellant admitted the violations on January 30, 2014. The juvenile court found Appellant in violation of probation and ordered his home-on-probation placement to continue. The juvenile court did not formally sustain Petition No. 2 at that time.

C. Petition No. 3: More probation violations

On April 3, 2014, the People filed another petition alleging that Appellant had violated probation by drinking beer near a school with two other minors; further, the petition alleged that on that occasion, a gun was discharged, and Appellant fled from responding police officers (Petition No. 3).[4] Appellant admitted the violations on May 8, 2014. The juvenile court found Appellant in violation of probation and ordered his home-on-probation placement modified to a placement on community detention program. As with Petition No.2, the juvenile court did not formally sustain Petition No. 3 at that time.

On April 21 and May 8, 2014, the juvenile court ordered Appellant to enroll in a sex offender program (an original term of probation) and admonished him that if he did not do so, he would be sent to the DJJ facility.

In July 2014, on the basis of the probation officer's progress report, the juvenile court terminated Appellant's community detention program and continued his home-on-probation placement. The probation officer stated that Appellant "has made positive choices, such as no longer associating with negative peers and showing greater respect for his parents."

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[3] Appellant eventually did go to the Museum of Tolerance and he did enroll in a sexual offender treatment program but never completed it due to his subsequent detention in Juvenile Hall.

[4] At the April 2015 hearing on Appellant's probation violations, the arresting officer subsequently testified that while two other suspects ran from the police, Appellant did not. In addition, the arresting officer clarified that one of the other suspects, not Appellant, shot at a beer bottle with a handgun while Appellant was in a nearby restroom.

D. Arrest: Possession of tear gas

On September 17, 2014, Appellant, now 18 years of age, was arrested for being a person convicted of a felony or assault in possession of tear gas (§ 22810, subd. (a)). At an October 2, 2014 hearing, the juvenile court ordered Appellant detained in juvenile hall and transported to Los Angeles Superior Court for arraignment on this offense.

Before this arrest, Appellant's parole officer had found that Appellant had "been trying to live his life as a law abiding citizen." Among other things, Appellant had been continuing with sex offender counseling and had completed substance abuse counseling. Appellant's probation officer described the arrest for possession of tear gas a "hiccup."

E. Petition No. 4: Still more probation violations

From October 2014 to February 2015, Appellant resided in Sylmar Juvenile Hall (Juvenile Hall). For the first month and a half of his tenure at Juvenile Hall, the staff regarded Appellant as a role model for the younger detainees. Over time, however, Appellant's behavior "progressively changed"; it became progressively worse. Where once he was a positive role model for other detainees, Appellant's attitude and actions became "cancerous." As detailed by one of the detention officers for Juvenile Hall, Appellant "intentionally disturb[ed] the workings" of his living unit through a variety of misconduct, including refusals to follow safety instructions from staff members (e.g., refusing to submit to daily searches) and by using profanity when addressing staff members. Appellant even went so far as to threaten staff members with violence by telling them that he would "fuck [them] up." Appellant adopted the mantle of a hardened criminal, bragging that he was going to be sent to "County" jail. According to Juvenile Hall staff, Appellant "show[ed] no desire or effort to adjust or change any negative behavior," and "refuse[d] to comply with the expectations set forth by his officer and the unit."

On February 24, 2015, the People filed yet another petition alleging that Appellant had violated the terms of his probation by failing to follow his probation officer's instructions and comply with his program in juvenile hall (Petition No. 4). Appellant denied Petition No. 4's allegations. The juvenile court ordered Appellant to be housed in

Los Angeles County jail pending a probation violation hearing, finding his behavior was disrupting juvenile hall: "[B]ased upon the information to the court, I'm prepared to order [Appellant] housed in county jail, pending the hearing [on his probation violations] because it looks like he is just not . . . cooperating to the extent that he's disrupting the other minors' program. [¶] I placed him in juvenile hall because I felt that it would be appropriate, even against Probation's policy to keep an 18-year old in the hall, but that was all presupposed on his good behavior, and he's not holding up his end of the bargain."

F. Commitment to the DJJ following a hearing on Appellant's probation violations

On April 28, 2015, after a contested probation violation hearing, the juvenile court sustained Petition Nos. 2–4, and found that Appellant was in violation of the terms of his probation.[5] The court ordered that Appellant be committed to the DJJ for a maximum term of confinement of eight years for his underlying forcible rape offense, which the district attorney called one of the "most serious offenses" that she has encountered since being assigned to juvenile court.

In reaching its decision, the juvenile court noted that one factor linking Appellant's original crime and some of his subsequent violations of his probation was his abuse of alcohol. As the court noted, Appellant drank when he committed the underlying rape and Appellant was "extremely intoxicated" when he was found in the park in March 2014, associating with another minor who not only had a firearm but discharged the weapon in a park near a school.

The juvenile court explained its decision as follows: "We could have [committed] [Appellant] after the first petition. We didn't. I could have sent him to DJJ after he admitted the two petitions because of the subsequent behavior. We didn't. The reason why is because we made every—every attempt was made to allow [Appellant] a chance

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[5] Because the hearing was limited to Appellant's probation violations, the trial court did not consider the tear gas arrest.

to bring himself back into full compliance so that [he] wouldn't have to be sent to DJJ. [¶] Even after all that was done I required the People to prove the petitions that were already admitted to because . . . before taking such a drastic step, it's important that the minor understand what he did and that he understand the we treated him as fairly as possible. . . . The People really did not have to prove the other petitions that he already admitted to, but I required that proof because I wanted the minor to be in court and hear from the people who were saying what he did and why this constituted a violation of his probation. [¶] So if there's any confusion on the record, the reason why is because we tried hard to bring [Appellant] into compliance with his probation and that, if that wasn't clear, I wanted to be clear to [Appellant] why he was being sent to DJJ."

DISCUSSION

A. Standard of review and legal principles governing DJJ commitments

A juvenile court's decision to commit a minor to the DJJ will be reversed only if the court abused its discretion. (*In re Jose T.* (2010) 191 Cal.App.4th 1142, 1147.) "[D]iscretion is abused whenever the court exceeds the bounds of reason, all of the circumstances being considered." (*People v. Giminez* (1975) 14 Cal.3d 68, 72.) "An appellate court will not lightly substitute its decision for that rendered by the juvenile court. We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them. [Citations.] In determining whether there was substantial evidence to support the commitment, we must examine the record presented at the disposition hearing in light of the purpose of the Juvenile Court Law." (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395 (*Michael D.*); *Giminez*, at p. 72.)[6]

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[6] "Substantial evidence" must possess "'ponderable legal significance'"; it must be "'reasonable . . . , credible, and of solid value . . . .'" (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) Under the substantial evidence test, the focus is on the quality, rather than the quantity, of the evidence. "Very little solid evidence may be 'substantial,' while a lot of extremely weak evidence might be 'insubstantial.'" (*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871–872.) "Inferences may constitute substantial evidence, but they

The purpose of the juvenile court law is "to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court . . . ." (Welf. & Inst. Code, § 202, subd. (a).) Section 202 of the Welfare and Institutions Code dictates that juvenile offenders be committed "in conformity with the interests of public safety and protection, [to] receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances." (Welf. & Inst. Code, § 202, subd. (b); *Michael D.*, *supra*, 188 Cal.App.3d at p. 1396.) In amending the law in 1984, "'the Legislature intended to place greater emphasis on punishment for rehabilitative purposes and on a restrictive commitment as a means of protecting the public safety.'" (*In re Carl N.* (2008) 160 Cal.App.4th 423, 433.) Nevertheless, "the Legislature has not abandoned the traditional purpose of rehabilitation for juvenile offenders." (*In re Julian R.* (2009) 47 Cal.4th 487, 496.) Because commitments to DJJ cannot be based solely on retribution grounds (Welf. & Inst. Code, § 202, subd. (e)(5)), there must be evidence demonstrating "(1) probable benefit to the minor and (2) that less restrictive alternatives are ineffective or inappropriate." (*Michael D.*, at p. 1396; *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576; Welf. & Inst. Code, § 734.) In determining the appropriate disposition for the minor, the juvenile court considers "(1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor's previous delinquent history." (Welf. & Inst. Code, § 725.5.)

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must be the product of logic and reason. Speculation or conjecture alone is not substantial evidence." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) If there is substantial countervailing evidence, it is of no consequence: "We do not review the evidence to see if there is substantial evidence to support the losing party's version of events, but only to see if substantial evidence exists to support the verdict in favor of the prevailing party. Thus, we *only* look at the evidence offered in [the prevailing party's] favor and determine if it was sufficient." (*Pope v. Babick* (2014) 229 Cal.App.4th 1238, 1245.)

B. The juvenile court did not abuse its discretion in sentencing Appellant

As discussed herein, we hold that the Appellant's commitment to the DJJ was not only based on substantial evidence but in conformance with public safety and Appellant's best interests, while simultaneously holding him accountable for his behavior.

1. *Substantial evidence supports the juvenile court's decision that commitment to the DJJ would provide a probable benefit to Appellant*

There are two sets of facts which strongly support the juvenile court's determination that Appellant would probably benefit from the "reformatory, educational discipline and other treatment" services available at DJJ. The first is Appellant's abuse of alcohol. As the juvenile court noted, Appellant's use of alcohol played a central role in two instances where Appellant exercised appallingly poor judgment, one of which resulted in tragedy, a girl was forcibly raped, and one which luckily did not end in tragedy, only a beer bottle was shattered, not a life, when one of Appellant's companions discharged a handgun in a park near a school. As other courts have recognized, commitment to the DJJ offers, among other things, sustained treatment for substance abuse, including postrelease supervision services. (See *In re M.S.* (2009) 174 Cal.App.4th 1241, 1249.)

The second set of facts indicating that commitment to the DJJ would probably be appropriate is Appellant's lack of self-discipline and his disregard for his obligations as a member of civil society. Although he committed a horrible act in raping a young woman, he received a relatively lenient sentence—nine months in a camp and then home-on-probation with few, if any, onerous terms. But could he adhere to those terms? No. For example, he was required, quite appropriately given the crime, to complete a sex offender course as one of the terms of his probation. Appellant's probation began in August 2012. By the time of his arrest in September 2014, more than two years later, Appellant still had not completed the required sex offender course. Similarly, although Appellant had the good fortune to find himself in juvenile hall given his age (18), he failed to make good use of his time there. While he started out being a positive role model for younger detainees, he quickly became a negative role model, a "cancer." Given Appellant's

repeated failure to adhere to the terms of his probation despite being offered multiple chances to do so, the juvenile court could reasonably conclude that the greater structure and discipline of the DJJ would probably be beneficial to Appellant.

In short, given Appellant's age, the gravity of the offense committed by the Appellant (forcible rape), and Appellant's inability to adhere to the terms of his probation—despite repeated chances to do so—the juvenile court's decision to commit Appellant to the DJJ for Appellant's benefit was both reasoned and reasonable.

2. *Substantial evidence supports the juvenile court's decision that there was no less restrictive alternative to DJJ commitment*

The court did not consider commitment to the DJJ for the first time at the April 2015 hearing on Appellant's probation violations. Instead, the court repeatedly considered this option between 2012 and the April 2015 hearing, but each time the court elected to proceed with a less restrictive alternative. The juvenile court first considered a commitment to the DJJ in 2012 in light of the gravity of the rape. Although Appellant's probation officer recommended commitment to the DJJ, the juvenile court opted for a less restrictive alternative—juvenile camp followed by home-on-probation.

The juvenile court reconsidered commitment to the DJJ in 2013 and again in the spring of 2014 due to Appellant's probation violations, including his failure to enroll in and complete a sex offender program, even though that was an original condition of probation. In the spring of 2014, the court repeatedly admonished Appellant that if he did not enroll in a sex offender program, he would be sent to the DJJ facility. Threats of commitment to DJJ, however, had only a modest effect on Appellant's behavior, as while he managed to enroll in a sex offender course, he never completed the course before his subsequent arrest for possessing tear gas. Instead of manifesting a reordering of his priorities, Appellant's behavior in juvenile hall got progressively worse. In addition to showing a lack of respect for the terms of his court-ordered probation, Appellant, during his stay at juvenile hall, showed an unmistakable lack of respect for that institution's rules, staff members, and other detainees. From the trajectory of Appellant's conduct

over the course of three years, the court reasonably determined that there was no less restrictive alternative that would be effective or appropriate.

In sum, as the juvenile court noted, "every attempt was made to allow [Appellant] a chance to bring himself back into full compliance so that [he] wouldn't have to be sent to DJJ." But Appellant repeatedly failed to take advantage of the less restrictive options provided to him, effectively leaving the trial court with no alternative but to commit Appellant to the DJJ. The fact that Appellant may not have committed any other serious crimes following the rape in 2013 is beside the point. He committed the rape when he was 15; the commitment occurred when he was 18. During the intervening three years, Appellant's conduct should have shown improving maturity, a greater sense of personal responsibility. Instead, Appellant demonstrated by his conduct and by his repeated failure to adhere to the terms of his probation, a persistent immaturity and lack of responsibility. Under such circumstances, the juvenile court's decision was neither arbitrary nor beyond the bounds of reason.

We affirm the commitment to the DJJ as within the juvenile court's proper exercise of discretion and consistent with the Legislature's decision to place greater emphasis on punishment for rehabilitative purposes and on a restrictive commitment as a means of protecting the public safety.

DISPOSITION

The order is affirmed. The juvenile court is directed to correct the April 28, 2015 minute order by striking the probation terms imposed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J. LUI, J.